IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9500 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NASIRMOHMMAD NOORMOHMMAD SHEIKH

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR KC SHAH, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 20/10/2000

ORAL JUDGEMENT

1. The petitioner, through this writ petition under Art. 226 of the Constitution of India, has challenged the detention order dated August 19, 2000 passed by the Commissioner of Police, Ahmedabad City, under the Prevention of Anti Social Activities Act (for short,

PASA).

2. Shri HR Prajapati, learned counsel for the petitioner contended that the grounds of detention furnished to the petitioner, make out, if at all, only a case of disturbance of law and order and not a situation where public order has been disturbed by the alleged activities of the petitioner. He, therefore, contended that the impugned order is liable to be set aside.

3. As against this, Shri KC Shah, learned AGP contended that the impugned order is perfectly justified and it was passed on the strength of materials placed before the Detaining Authority by the Sponsoring Authority.

4. The grounds of detention have been examined. There are two materials which are disclosed against the petitioner in the grounds of detention. The first is, a list of three cases under the Prohibition Act, on which the Detaining Authority was satisfied that the petitioner is a bootlegger. On this point, the satisfaction of the Detaining Authority requires no interference, because in view of these three cases, the petitioner could be branded as bootlegger within the meaning of sec.2(b) of the Act. However, this alone is not sufficient for detaining a person under PASA. A bootlegger may be carrying on illegal trade and activity in sale, purchase and storage of illicit liquor but, that by itself is no ground for passing detention order against him under PASA. A bootlegger can be detained under PASA only when his activities are found to be prejudicial for maintenance of public order, as is mentioned under sec.3(1) of the Act. In order to treat the activities of the petitioner as prejudicial for maintenance of public order nothing has been disclosed in the grounds of detention that, when the petitioner was hauled up in three Prohibition Cases, he acted in such a manner that his activities could be branded as prejudicial for maintenance of public order. Then, remains the activities of the petitioner as narrated by the two witnesses examined by the Sponsoring Authority.

5. One witness stated about the incident of July 15, 2000, which took place at 2:00 p.m.. The statement of this witness was recorded on August 18, 2000. In short, the statement of this witness was, before the Sponsoring Authority, that the petitioner suspected that the said witness was a police informer and he was keeping a watch over illegal activities of the petitioner and was passing on information to the police. On being questioned by the

petitioner, the witness denied that he was giving information against him to the police. The petitioner become excited and he started beating the witness with fists, kicks, etc.. Persons gathered at the spot. They could not dare to save the witness. The petitioner pointed out knife towards the witness and also towards the persons who gathered at the spot. The petitioner chased them having knife in his hand and on account of this incident, people ran helter-skelter and vehicular traffic was disturbed and daily routine of the people was also disturbed. On the face value of this statement it can hardly be said that the activity of the petitioner disclosed on this date created a situation which was prejudicial for maintenance of public order. At the most, taking the face value of the statement of this witness, it can be said that it was a situation of law and order which could be tackled by the police within the clutches of ordinary criminal law and not inviting application of preventive detention law.

6. Similar is the situation regarding incident of July 25, 2000. Here again, usual story has come that the petitioner wanted vehicle of the witness on hire for transporting country made liquor. The petitioner offered freight of Rs.500=00 but, the witness refused; whereupon, petitioner caught hold of the witness, dragged him out of the vehicle and started beating him in public. Thereafter, the usual story proceeds that knife was shown and pointed out to the witness, as well as towards the persons who gathered at the spot. This situation is also akin to the situation which occurred on July 15, 2000 and it was no more a situation beyond the sphere of disturbance of law and order. Since these two incidents were not such, which could be said to have disturbed public order, peace and tranquility and even tempo of life of the persons in the locality, the impugned order was illegally passed under the Act.

7. It may also be mentioned that the statements of the above two witnesses were recorded on August 17 and 18, 2000 respectively. Immediately thereafter, on the next day, the statements were placed before the Detaining Authority for verification on August 19, 2000 and the Detaining Authority, it seems, had no other important business and immediately passed the detention order on August 19, 2000. It is, therefore, clear that it was a case of predetermined mind and hasty order of detention was passed against the petitioner without applying mind to the materials on record. As such, the impugned order can not be sustained.

8. The petition, therefore, succeeds and is hereby allowed. The impugned detention order is quashed. The petitioner shall be released forthwith, unless wanted in some other case.

October 20, 2000. [D.C. Srivastava, J.]

/sakkaf